

**`In the High Court of Judicature for Rajasthan at
Jaipur Bench Jaipur**

Order

SB.Civil Writ Petition No.5124/1993

Amod Kumar vs. State of Rajasthan & Ors.

Date of Order : August 4, 2006

Present

Hon'ble Mr.Justice R.C.Gandhi

Mr.SS Hasan,for the petitioner.
Mr.HV Nandwana, Dy.GA

Oral

Petitioner seeks issuance of writ of Certiorari to quash the order dated 6th February, 1990 (Annexure-5) whereby the representation of the petitioner for compassionate appointment against higher post has been rejected by the respondents.

Petitioner's father Satyendra Krishna, while working against the post of Inspector(Audit), Co-operative Societies, Khandar, died on 9th January,1985. Petitioner in the year 1985 was possessing the qualification of Three Years Degree Course in Commerce. He filed an application for compassionate appointment. He was appointed as Lower Division Clerk by the respondents on compassionate grounds. He, thereafter, filed another application stating therein that he being dependant of deceased government servant and

possessing the eligible qualification for the post of Inspector, should be appointed as Inspector in terms of Rule 5(2) as clarified vide order dated 4.11.85, read with corrigendum dated 29.9.1987. The respondents, considered the request of the petitioner and rejected vide impugned order 6.2.1990 on the ground that he was appointed at his request against the Post of Lower Division Clerk..

The respondents have filed reply stating therein that the petitioner and his mother submitted an application on the requisite proforma to the concerned authority claiming appointment against the post of Lower Division Clerk. The application was forwarded to the Registrar by the Special Auditor Co-operative Societies, Sawaimadhopur. It is denied that the petitioner claimed his appointment initially to the post of Inspector and that the petitioner, having once appointed, is estopped to seek for appointment to the post of Inspector. It has also been stated that it is provided in the Rules that only dependent of deceased servant may be given appointment on suitable post and, accordingly, vide order dated 25.2.1985, the petitioner has been appointed as Lower Division Clerk that too on his request.

Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has submitted that father of the petitioner died on 9th January, 1985 and his case was to be considered under the Rajasthan Recruitment of

Dependants of Government Servants (Dying while in Service) Rules, 1975 (hereinafter be called as "the Rules of 1975"). Undoubtedly, at the time of the death of the father of the petitioner new Rules were not in existence, therefore, the case of the petitioner was to be dealt with in accordance with the provisions of the old Rules of 1975. Learned counsel has submitted that in terms of Rule 5(2) of the Rules of 1975, the petitioner was entitled to be appointed as Inspector instead of Lower Division Clerk. Rule 5(2) for convenience is extracted below and reads as under:

"in cases where the deceased Government servant was holding a subordinate service post his dependent if he does not possess any specialized qualifications but fulfils the qualification prescribed for such post may be considered for appointment to a post which must not be higher in rank and status to the post to which the deceased Government servant was holding."

I have perused the application of the petitioner annexed as annexure R/1 with the reply of the respondents. Perusal whereof makes out that he himself voluntarily submitted an application seeking appointment to the post of Lower Division Clerk and the respondents accepting his request has appointed him as Lower Division Clerk. There is no provision in the Rules that once the dependent of deceased government servant seeks appointment according to his choice, subsequently, he can reopen the case for his appointment to higher Post. Learned counsel for the

respondents relying upon the judgment of this court delivered in the case titled ***State of Rajasthan & Ors vs Sushil kumar Natani reported in (RLR 2001(3)) 137*** which deals with a similar proposition on the facts and law, has submitted that in this case (supra) also, the government employee expired in March, 1985 and the dependent of the deceased employee was possessing qualification of Degree in B.Com. and applied for his compassionate appointment under the Rules of 1975 for the post of Accountant. The respondents appointed him as Lower Division Clerk on 10.4.1985. Being dissatisfied with his appointment, he approached the Court by filing writ petition, which was allowed, and, in appeal by the State Government, the Division Bench of this Court, relying on the judgments of the Apex Court, dismissed the cause observing as under:-

"We are firmly of the opinion that since the rules, providing for compassionate appointments, are based on humanitarian consideration and for giving immediate employment to the bereaved family, are liable to be considered as the rules, putting reasonable restrictions on the fundamental right, provided by Article 16. To give a wider interpretation to these rules, may result in the rules becoming unreasonably restricting any such restriction, which, in our view, is not permissible in law. We, therefore, are unable to accept the submission, made by Shri V.D. Gathala, that merely because the respondent is liable to be appointed on a higher post, he should be so appointed by issue of writ of mandamus, when the basis of such appointment, is compassion. Therefore, no writ of mandamus can be issued, directing appointment of the respondent

on a higher post."

The petitioner, after seeking and accepting the appointment against the post of Lower Division Clerk, cannot be permitted to reopen the case for appointment on higher post, as the right for appointment on compassionate ground stood consummated. Dealing with this proposition of law, the Apex Court in the case titled ***State of Rajasthan vs Umrao Singh*** reported in **1994(6)SCC 560** observed in para Nos.8 & 9 as under:

"8. Admittedly the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of "endless compassion". Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.

9. Since both sides relied on Naresh Kumar Bali's case we will now refer to the same. We had indicated our mind in that very ruling in paragraph 15 of the said judgment. It reads as under: (SCCp.452 para 15).

"Though the respondent claimed that he had applied for the post of a teacher the

Subordinate Service Selection Board had not chosen him for the post of teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a clerk and his claim for consideration for the post of teacher was one year after his appointment. *Thus, the appointment on compassionate ground as per the scheme had been completed."*

Therefore, once the right has consummated as we indicated earlier, any further or second consideration for a higher post on the ground of compassion would not arise."

For the aforesaid reasons, the writ petition, being devoid of merit, is dismissed.

(R.C.Gandhi), J

om/